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U.S. SMALL BUSINESS ADMINISTRATION,
as Receiver for PROSPERO VENTURES, L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. SMALL BUSINESS
ADMINISTRATION, as Receiver for
PROSPERO VENTURES, L.P.,

Plaintiff,

v.

HIGH GROWTH MANAGEMENT, LTD.,

Defendant.

NO. C 07-03735 MEJ
Related Cases

No. C 07-3732 MEJ
No. C 07-3733 MEJ
No. C 07-3736 MEJ
No. C 07-3737 MEJ
No. C 07-3738 MEJ
No. C 07-3739 MEJ
No. C 07-3740 MEJ
No. C 07-3741 MEJ

**DECLARATION OF CHRISTINE J.
LEVIN IN SUPPORT OF
APPLICATION FOR DEFAULT**
[Filed concurrently with Application
for Judgment, Memorandum of Points
and Authorities, Declaration of Brian
Stern, and Proposed Judgment]

Date: January 17, 2007
Time: 10:00 a.m.
Courtroom B, 15th Floor

I, CHRISTINE J. LEVIN, do hereby declare and state as follows:

1 1. I am an attorney at law duly licensed to practice before the United States of America,
2 Northern District of California Court, and am an associate with the law firm of Coleman & Horowitz,
3 LLP, attorneys of record for Plaintiff, U.S. SMALL BUSINESS ADMINISTRATION, as Receiver
4 for PROSPERO VENTURES, L.P. ("PROSPERO") f/k/a Dotcom Ventures, L.P.

5 2. I have personal knowledge of the facts contained herein and if called upon as a
6 witness, I could testify competently thereto.

7 3. This declaration is filed in support of Plaintiff's Application For Default.

8 4. For this Court's convenience, this Declaration is divided into five (5) sections.

9 **FACTUAL ALLEGATIONS**

10 5. HIGH GROWTH MANAGEMENT, LTD. (hereinafter "HIGH GROWTH") is a
11 foreign corporation which has not been granted status as a permanent U.S. resident. HIGH
12 GROWTH is not an infant, incompetent person, or a person in military service or otherwise
13 exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940.

14 6. The U.S. Small Business Administration ("SBA") is an agency with its principal
15 office located at 409 Third Street, S.W., Washington, DC 20416. By order entered October 20,
16 2004 (the "Receivership Order") this Court appointed the SBA as Receiver for PROSPERO
17 ("Receiver"). See Exhibit "A" to Declaration of Brian Stern.

18 7. SBA is an agency of the United States government. Accordingly, the federal courts
19 shall have original jurisdiction.

20 8. On April 13, 2007, this Court entered its Order ("Lift Stay Order") partially lifting
21 the blanket judicial injunction and stay against the commencement of civil legal proceedings of any
22 nature involving PROSPERO, or any of PROSPERO's general or limited partners ("LP"), imposed
23 by Paragraph 7 of the Receivership Order, for the sole purpose of authorizing the Receiver to
24 commence and prosecute separate litigation in this Court against those LPs, including HIGH
25 GROWTH, who had not paid its unfunded capital commitment to PROSPERO, and to take all steps
26 necessary to collect on the obligation of each LP to pay its unfunded capital commitment. See
27 Exhibit "B" to Declaration of Brian Stern.

28 9. PROSPERO is a California Limited Partnership. It maintained its last principal office

1 and place of business at 870 Market Street, Suite 1040 San Francisco, California 94102. The
2 underlying lawsuit is brought solely on behalf of PROSPERO.

3 10. This Court is the appropriate court to decide this matter because PROSPERO's
4 principal office sits within its physical boundaries.

5 11. Diversity of citizenship is established within the meaning of 28 U.S.C. § 1332 in light
6 of the fact that PROSPERO's primary office is located in California, SBA's primary office is located
7 in Washington D.C., and HIGH GROWTH is a foreign corporation.

8 **SERVICE AND SUMMONS OF THE COMPLAINT ON APPOINTED AGENT**

9 12. On August 29, 2007, at 9:00 p.m., Plaintiff personally served Jerald P. Shaewitz with
10 copies of the complaint against HIGH GROWTH. True and correct copies of the proof of service
11 were submitted to this Court on September 26, 2007. A true and correct copy of the complaint is
12 on file with this court.

13 13. HIGH GROWTH completed an Investor Questionnaire designating Jerald P. Shaewitz
14 as its agent for service of process. A true and correct copy of the questionnaire is attached hereto
15 as Exhibit "A."

16 14. The appointment of Jerald P. Shaewitz as the agent for service of process within the
17 United States to receive service of process on their behalf and in connection with the enforcement
18 of the obligation of capital contribution was irrevocable.

19 15. Jerald P. Shaewitz was served at 24175 Dawnridge Drive in Los Altos, California.

20 16. Service of process on Jerald P. Shaewitz was proper within the meaning of Code of
21 Civil Procedure section 416.10 (a) and Corporations Code section 2110 which provides for service
22 on a foreign investor by hand delivery to designated agent for service of process.

23 **BREACH OF PARTNERSHIP AGREEMENT**

24 17. This action involves a claim for failure to make a capital contribution pursuant to a
25 PARTNERSHIP AGREEMENT between the parties. A true and correct copy of the Amended &
26 Restated Agreement of Limited Partnership For Dotcom Ventures, L.P. (formerly ASCII Ventures,
27
28

1 L.P.), a California Limited Partnership is attached to the complaint filed on July 19, 2007 as Exhibit
2 "A."

3 18. HIGH GROWTH has not appeared in this action and has not responded to the
4 complaint within the time permitted by law.

5 19. As of the date of the filing of this request, I have received no response to the
6 complaint from HIGH GROWTH.
7

8 20. Pursuant to Federal Rules of Court, Rule 55(a), the clerk of this court entered a
9 default judgment against HIGH GROWTH on October 18, 2007.

10 **ATTORNEYS' FEES**

11 21. Paragraph 5.7 entitled Failure to Contribute Capital explains: "If any legal
12 proceedings relating to the failure of a Limited Partner to make such contribution are commenced,
13 such Limited Partner *shall pay all costs and expenses* incurred by the Partnership, *including*
14 *attorneys' fees*, in connection with such proceedings." (Emphasis added.)

15 22. To date, attorneys' fees have been accrued in this matter.

16 23. In this matter, suit was filed against nine (9) limited partners, one of which is HIGH
17 GROWTH.
18

19 24. Attorneys' fees for matters that were only performed once are accounted for and
20 divided by nine. Examples of this would be the drafting of the administrative motion to consider the
21 cases related or reading the Partnership Agreement. Plaintiff is not seeking to recover these same
22 attorneys' fees from another defendant.

23 25. For tasks that must be performed for each individual defendant such as the drafting
24 of the Complaint and drafting of the Request for Default, counsel kept track of the time it took to
25 draft all of the documents and then divided the time by the number of the defendants in order to be
26 fair to each defendant. This is due to the fact that the first complaint drafted was more time
27 consuming than the last.
28

COSTS

26. Paragraph 5.7 entitles Plaintiff to Costs.

27. To date, Plaintiff has the following costs in bringing this action:

a. Filing fee for Complaint \$350.00

b. Service of process \$59.50.

c. any other mailing / filing copying, etc \$87.24.

Total Costs : \$396.74

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 11, 2007, at Fresno, California.

/S/ Christine J. Levin
CHRISTINE J. LEVIN

PROOF OF SERVICE

I declare that I am a resident of the County of Fresno. I am over the age of eighteen (18) years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno, California 93704.

On December 12, 2007, I served the foregoing document described as **DECLARATION OF CHRISTINE J. LEVIN IN SUPPORT OF APPLICATION FOR DEFAULT** on the interested parties, addressed as follows:

☒ BY MAIL - by placing ☒ a true and correct copy ☐ the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business.

☐ BY CALIFORNIA OVERNIGHT - by placing ☐ a true and correct copy ☐ the original thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery to the addressee noted above.

☐ BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and at the address shown above.

☐ BY FACSIMILE TRANSMISSION - by causing a true facsimile thereof to be electronically transmitted to the parties, by using their facsimile number indicated below.

Facsimile No.

☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on December 12, 2007, at Fresno, California.



Lisa R. Barr

Via U.S. Mail

Jerald P. Shaevitz
24175 Dawnridge Dr.
Los Altos Hills, CA 94024

Agent for Defendants,
High Growth Management, Ltd.

Via California Overnight:

Chambers Copies

Hon. Maria-Elena James
U.S. District Court, Northern District
450 Golden Gate Avenue
16th Floor, #1111
San Francisco, CA 94102